

REMARKS

The Examiner is thanked for the consideration given the application. Claims 27-52 are pending.

Entry of this response is respectfully requested because it places the application in condition for allowance. Also, it is believed that the application should necessarily have the status of being under non-final rejection because the previous request for reconsideration did not amend the claims in any way and, since the grounds for rejection have not changed, there has been no additional consideration and/or search necessary to develop a valid rejection.

Rejection(s) Over Nagai

Claims 27-52 were rejected under 35 U.S.C. §102(b) as being anticipated by or, alternatively, under 35 U.S.C. §103(a) as being unpatentable over Nagai (US 2001/0004708). This rejection is respectfully traversed.

The present invention pertains to a capsular tension ring adapted to be implanted in the equatorial region of a capsular bag after ablation of a cataractous crystalline lens. This capsular tension ring is illustrated, by way of example, in Figures 1-4 of the application, which is reproduced below.

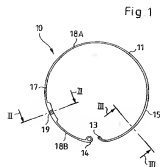


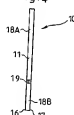
Fig 2

16 17

16 17

Fig 3

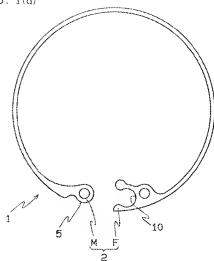
Fig. 4



Features of the present invention include the capsular tension ring including an open or closed annular body 11 having sharp edges 16, 17 and an axial length from about 0.3 mm to about 0.6 mm, the annular body 11 including the sharp edges 16, 17 being made from rigid material over the majority of its circumference and includes at least one flexible material junction 19 between two segments 18A, 18B of the rigid material annular body. See, e.g., independent claim 27.

In rejecting the claims of the present invention, the Office Action refers to Figure 1(a) of Nagai, which is reproduced below.

FIG. 1(a)

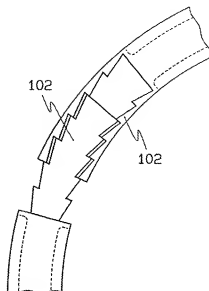
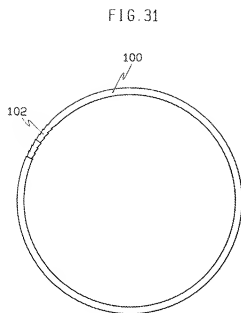


Distinctions of the present invention over Nagai have been set forth in the previously filed Request for Reconsideration which, for brevity, are not repeated here.

According to the Office, the applicant has argued novelty and nonobviousness based on four features: 1) the flexible material junction between two segments of rigid material junctions, 2) sharp edges, 3) optimizing sizes [sic] and 4) chemically modifying the segments to form rigid segments.

The Office urges once again that: "*Nagai clearly anticipates having 'at least one flexible material junction between two segments'*" [of the rigid material annular body], relying on the disclosure of the Figures 31 and 32, reproduced below. It is noted that Fig. 31 is mentioned in paragraph [0049] and Fig. 32 is mentioned in paragraph [0050]. Neither of those paragraphs teaches anything but a showing of a "*conventional ring*".

FIG.32



The Offices admittedly proffers an ingenuous argument that these figures disclose the junction receiving a portion of the connecting junction and due to the decrease in thickness of the material, it is more flexible in comparison to its connecting counterparts. While it is true that the thicker portions would be more rigid than thinner portions, this finding is totally beside the point as it does not correspond to the claim language. Rather the claim requires that the majority of the circumference of the ring is made form a rigid material and that there is flexible material junction between two segments of the rigid material annular body.

There is no teaching or suggestion of making the Nagai ring of more than one material, let alone one rigid material corresponding to the majority of the circumference of the annular

body and a flexible material junction or junctions between two segments of the rigid material body.

Rather, the Office does not even assert that the majority of the annular ring of Nagai is made of rigid material and the junction between two rigid material segments is made of a flexible material. While it is likely that the male portion 102 is more rigid than the female portion 102 they are both made of the same material. Also when assembled the junction including both the male portion and the female portion (Figure 32, reproduced above) is the most rigid part of the entire annular body. The remaining portions of the annular body are therefore less rigid.

Also the junction in Nagai does not make bending of the ring inside the capsular bag any easier or injury to the eye less probable since they are located at the respective ends of the body.

The further argument that Nagai discloses a "mixture" of materials is likewise totally beside the point. Indeed in Nagai if the annular body is made of a "mixture" that can only mean that the entire body is made of a single mixture of materials and that no part of the annular body is made of a material more flexible than that of the rest of the ring.

The rejection of claims 27-52 under 35 U.S.C. §102(b) as being anticipated by Nagai is untenable as presented since it does not even contend that there is a majority of the annular body of a rigid material and a junction of a flexible material.

Nor does it accept that a basic principal that a limitation not disclosed (e.g. the axial length of the ring) in the cited reference the claim cannot lack novelty over the reference.

The rejection of claim under 35 USC §103(a) over Nagai is untenable insofar as it cites the *Graham v John Deere* criteria for establishing obviousness but does not apply the criteria set down in that decision. The most grievous of the shortcomings is the failure to consider that the difference between a major part of an annular capsule tension ring of a rigid material and a junction between segments thereof of a flexible material which flexible material facilitates the introduction and implantation of the ring in the capsule bag so as to avoid injury to the eye.

In contrast, nothing in Nagai teaches or suggests how such an advantage could be obtained with an all rigid material capsule ring as admitted by the Office since, according to the Office, it is made of PMMA P56 which is acknowledged as being a rigid material.

Dependent claims recite additional patentable features. As none of those have been considered in the outstanding Office Action and bearing in mind that the independent claims 27, 49 and 51 from which they depend directly or indirectly are manifestly not taught or suggested by the cited and applied prior art, those dependent claims are likewise also *prima facie* patentable.

These rejections are believed to be overcome, and withdrawal thereof is respectfully solicited.

Request for Interview

The applicant's representative has attempted to telephonically contact the Examiner to arrange an interview without success. The Examiner is accordingly respectfully requested to contact the applicant's representative, Robert E. Goozner, Ph.D. at 703-521-2297 in order to arrange an interview.

Conclusion

The issuance of a Notice of Allowability is respectfully solicited.

In the event that there are any questions relating to this Request for Reconsideration, it would be appreciated if the Examiner would telephone the undersigned Attorney.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,
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